**HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

**WRIT PETITION No. 20909 of 2006**

Between:

M/s. Raasi Cotton Corporation,
Rep., by its Partner R.G. Ramana Reddy,
Guntur and another.

..Petitioners

And

Debts Recovery Tribunal,
Visakhapatnam and others.

..Respondents.

**:ORDER:**

Counsel for the petitioners : Shri V.L.N.G.K. Murthy

**October 11, 2006**:

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**Per G.S. Singhvi, CJ**

The finance committees constituted by the Government of India under the chairmanship of Shri M. Narasimham and Shri T. Tiwari respectively recommended setting up of Special Tribunals for expeditious adjudication of cases filed by the banks and financial institutions for recovery of loans and enforcement of securities. These recommendations were made in the backdrop of long delays caused in decision of the suits filed by the banks and financial institutions for recovery of their dues. Based on the recommendations of the two committees, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the 1993 Act'). The preamble to the 1993 Act is a reflection of the Government's determination to ensure that the loans etcetera sanctioned and disbursed by the banks and financial institutions are recovered without procedural impediments. In order to free the Tribunals from the shackles of procedural technicalities, the legislature inserted Section 18 in the 1993 Act, which

imposes a total ban to the entertaining of any dispute by any Civil Court in the matters covered by Section 17. Section 19 of the 1993 Act lays down the procedure to be followed by the Tribunals. By virtue of Section 34, overriding effect has been given to the provisions of the 1993 Act.

Unfortunately, notwithstanding the resolution of the Parliament to ensure expeditious adjudication of the matters involving recovery of dues of banks and financial institutions, the experience of last thirteen years has shown that due to dilatory tactics adopted by the debtors and borrowers, the proceedings before the Debts Recovery Tribunals established throughout the length and breadth of the country are prolonged for years together. This is one of the main reasons why the Parliament was impelled to bring about a more drastic legislative measure in the form of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for short, 'the 2002 Act'). The constitutionality of the 1993 Act and 2002 Act has been upheld by the Supreme Court in **Union of India and another v. Delhi High Court Bar Association and others**[1] and **Mardia Chemicals Ltd., v. Union of India**[2].

We have prefaced disposal of this writ petition filed

by the petitioners in an apparent bid to further delay the proceedings of O.A.No.40 of 2002 instituted by Andhra Bank, Pattabhipuram Branch, Guntur (for short, 'the bank') by making the aforementioned observations because after hearing Shri V.L.N.G.K. Murthy, learned counsel for the petitioners and perusing the record, we are convinced that the prayer made by the petitioners for restraining Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal') from continuing the proceedings of O.A.No.40 of 2002 on the pretext that five interlocutory applications filed by them, which stand registered as I.A.Nos.240 to 244 of 2006 have not been decided, is wholly meritless and there is no valid ground and justification for this court to pass an order, which would impede the proceedings of the Tribunal.

A perusal of the record shows that the bank filed application in 2002 under Section 19 of the 1993 Act for recovery of Rs.59,93,526.09 ps. due from the petitioners. In the reply filed by them, the petitioners denied their liability. They pleaded that the loan disbursed by the bank has been repaid and nothing is due from them. On 7-8-2006, Sri Ratnakaram Sudarshan, Senior Manager of the bank was examined in support of the application filed on behalf of the bank. He also filed an affidavit. The counsel for the petitioners did not cross-examine the witness on 7-

8-2006 and sought adjournment for this purpose. The Tribunal adjourned the case to 30-8-2006 and again to 18-9-2006 for cross-examination of Shri Ratnakaram Sudarshan. After securing adjournment for cross-examining the bank's witness and with the sole object of further delaying the proceedings of the application, the petitioners filed five applications on 14-9-2006, which were registered as I.A.Nos.240 to 244 of 2006. The reliefs sought in those applications, as enumerated in paragraph 5 of the affidavit filed in support of the writ petition, are reproduced below:

> " (i) I.A. No.240/2006 in O.A.No.40/2002: For the reasons stated in the accompanying affidavit, the petitioners/defendants 1 and 2 pray that the Hon'ble Court may be pleased to frame/recast issues in the suit as per the draft issues enclosed herewith and for that purpose to pass such other necessary and appropriate orders.
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> (ii) I.A.No.241/2006 in O.A.No.40/2002: For the reasons stated in the accompanying affidavit, the petitioners/defendants 1 and 2 pray the Hon'ble Court/Tribunal may be pleased to direct the Applicant Bank/Respondent herein to produce the original ledgers, scroll books and daily registers pertaining to the alleged account maintained by the Kothapeta Branch in relation to the petitioners herein up to the end of October, 1998 and for that purpose to pass such other appropriate and necessary orders.

(iii) I.A.No.242/2006 in O.A.No.40/2002: For the reasons stated in the accompanying affidavit, the petitioners/defendants 1 and 2 pray that the Hon'ble Tribunal may be pleased to eschew the oral and documentary evidence and the exhibits marked in the deposition of P.W.1 from record and for that purpose to pass such other appropriate and necessary orders.

(iv) I.A.No.243/2006 in O.A.No.40/2002: For the reasons stated in the accompanying affidavit, the petitioners/defendants 1 and 2 pray that the Hon'ble Tribunal may be pleased to dismiss O.A.No.40/2002 on the file of this Hon'ble Tribunal filed by Pattabhipuram Branch of Andhra Bank in limine on the grounds of want of privity of contract, lack of relationship of debtor and creditor and non-disclosure of cause of action by passing either orders of rejection; return and dismissal as may be appropriate and for that purpose to pass such other appropriate and necessary orders.

(v) I.A.No.244/2006 in O.A.No.40/2002: For the reasons stated in the accompanying affidavit, the petitioners/defendants 1 and 2 pray the Hon'ble Court/Tribunal may be pleased to adjudicate as a preliminary point the question of jurisdiction of Debt Recovery Tribunal constituted under the provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993 which is creature of Parliament to grant decrees and decide claims relating to alleged mortgages of application schedules A, B and C which are agricultural lands covered by State List II of Constitution of India and outside the legislative competence of Indian

Parliament which enacted DRT Act, 1993 relating to Banking occurring in List I of Constitution of India as a preliminary point consequently resulting in lack of jurisdiction of this Tribunal to adjudicate claims relating to mortgage and sale of agricultural lands and for that purpose to pass such other appropriate and necessary orders."

On 14-9-2006, the Tribunal took cognizance of the statement of the counsel for the petitioners that his clients have filed applications including the one for eschewing the oral and documentary evidence produced on behalf of the bank and also for dismissal of the application filed by the bank and adjourned the case. On the next date i.e., 18-9-2006, the Tribunal issued notice of the applications and fixed 9-10-2006 for disposal thereof. The Tribunal also recorded that even though the bank's witness was present, the counsel for the petitioners did not cross-examine him.

Having succeeded in securing adjournment of the proceedings of O.A. on three consecutive dates, the petitioners filed the present petition for directing the Tribunal not to proceed with the cross-examination of the bank's witness by contending that the applications filed by them questioning the jurisdiction of the Tribunal, for summoning the original records, and for eschewing the

oral and documentary evidence and the exhibits marked in the deposition of P.W.1 from the record, are pending.

Shri V.L.N.G.K. Murthy fairly stated that two of the five applications filed by his clients, including the one for amendment/ modification of issues ought to have been filed earlier, but argued that the Tribunal should be restrained from insisting of cross-examination of the bank's witness till the production of the original records. Learned counsel submitted that the cause of his clients will be seriously prejudiced if the cross-examination of witness is done without the benefit of original records.

We have given serious thought to the submissions of the learned counsel, but have not felt impressed. Rather, we are convinced that the applications filed by the petitioners are part of dilatory tactics adopted by them to defeat the purpose of the 1993 Act, which, as mentioned above, was enacted for expeditious adjudication of the disputes relating to recovery of debts etcetera due to banks and financial institutions. The very fact that the petitioners have chosen to file five applications in one go after a period of four years of the institution of the application by the bank is, in our opinion, sufficient to draw an inference that their only intention is to, somehow or the other, prolong the proceedings of the O.A. filed by the bank. If that was not so, they would have questioned the

jurisdiction of the Tribunal at the threshold of the proceedings and applied for modification/amendment of the issues immediately after the same were framed. In this view of the matter, we are not inclined to pass any order, which would amount to undue interdiction by this Court with the proceedings pending before the Tribunal.

We are further of the view that when the petitioners have disputed their liability to repay the amount specified in the application filed by the bank, the primary burden to establish the claim is on the bank, which is required to adduce cogent and tangible evidence to substantiate the same. The petitioners are free to dispute the authenticity of the documents produced on behalf of the bank and produce their evidence to show that the same are not genuine. In the cross-examination, they can put all questions to the witness of the bank and try to substantiate their case that nothing is due from them. Therefore, mere pendency of the interlocutory applications filed by them cannot justify an order for deferring the cross-examination of P.W.1 produced by the bank.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of main petition,

W.P.M.P.No.26489 of 2006 filed by the petitioners for interim relief is also dismissed.

**G.S. SINGHVI, C.J.**

**C.V. NAGARJUNA REDDY, J.**

11-10-2006

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1 (2002) 4 SCC 275

2 (2004) 4 SCC 311